



Eden Environmental Citizen's Group

April 19, 2019

Via Certified Mailing USPS Tracking No. 7018 0360 0000 8018 0651

Victor H. Emmerich
Janet L. Emmerich
Trustees for Emmerich Living Trust
755 Augusta Drive
Moraga, CA 94556-1007

Re: FIRST SUPPLEMENTAL 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

Dear Mr. and Ms. Emmerich:

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Victor H. Emmerich and Janet L. Emmerich as Trustees of the Emmerich Living Trust dated 5/20/87 ("Property Owner") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Precision facility located at 1220 Fourth Street in Berkeley, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger and the Property Owner under CWA section 505(a) for the violations described more fully below.

2151 Salvio Street #A2-319
Telephone: 925-732-0960



Concord, CA 94520
Email: edenenvcitizens@gmail.com

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS") indicates that on or around January 26, 2017, the Discharger submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 2 01I027091. However, CEPA also notes that the Discharger had been previously covered under the General Permit from March 20, 1992, through February 25, 2016, under WDID number 2 01I000793. Coverage under that WDID number was terminated due to the Discharger's failure to reapply for permit coverage under the 2015 Permit.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Precision's permanent facility address of 1220 Fourth Street in Berkeley, California.

The Precision facility has been in operation since 1972 and manufactures industrial coatings, including coating paint for cardboard boxes used by the produce industry, wood primer and stains, metal primers, and auto primers. The Facility also operates propane-fueled forklifts. Facility operations are covered under Standard Industrial Classification Code (SIC) 2851.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector C – Chemical Products Manufacturing Facilities, polluted discharges from these types of facilities contain pH affecting substances; total suspended solids ("TSS"); titanium dioxide, glycol ether, acetone, propylene

glycol, benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease (“O&G”). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

B. The Affected Receiving Waters

The Facility discharges into the San Francisco Bay/Pacific Ocean (“Receiving Waters”).

The San Francisco Bay is a water of the United States. The CWA requires that water bodies such as the San Francisco Bay meet water quality objectives that protect specific “beneficial uses.” The Regional Water Board has issued the San Francisco Bay *Basin Water Quality Control Plan* (“Basin Plan”) to delineate those water quality objectives.

The Basin Plan identifies the “Beneficial Uses” of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the San Francisco Bay is listed for water quality impairment on the most recent 303(d)-list for the following: chlordane; dichlorodiphenyltrichloroethane (DDT); dieldrin; dioxin compounds (including 2,3,7,8- tetrachlorodibenzo-pdioxin); furan compounds; invasive species; mercury; polychlorinated biphenyls (PCBs); PCBs (dioxin-like); selenium, and trash.

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient/Invalid SWPPP

The Discharger’s current Storm Water Pollution Prevention Plan (“SWPPP”) for the Facility is inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E(3) of the General Permit, and does not include all the

- facility sampling points and discharge locations;
- (b) The SWPPP fails to include an appropriate Monitoring Implementation Plan. (Section X.I);
 - (c) The SWPPP fails to include an appropriate discussion of drainage areas and Outfalls from which samples must be taken during Qualified Storm Events (Section X.I);
 - (d) The SWPPP fails to include an adequate discussion of the Facility's receiving waters;
 - (e) The SWPPP fails to discuss in specific detail Facility operations, including its SIC Code and hours of operations (Section X.D.2.d);
 - (f) The SWPPP fails to include an appropriate discussion of the Industrial Materials handled at the facility (Section X.F);
 - (g) The SWPPP fails to include an adequate description of Potential Pollutant Sources and narrative assessment of all areas of industrial activity with potential industrial pollutant sources (Section X.G.1 and X.G.2);
 - (h) The SWPPP fails to include the appropriate sampling parameters for the Facility (Table 1, Section X.I);
 - (i) The Best Management Policies (BMPs) as indicated in the SWPPP are insufficient and do not comply with the minimum required categories as listed in the (Section X.H.1); and there are no Site-Specific Best Management Policies identified in the SWPPP to comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in the Facility's storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability; and
 - (j) The SWPPP is invalid because it was not certified and submitted by the Facility's Legally Responsible Person. In fact, the SWPPP was not signed or certified by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), which includes SWPPPs, must be certified and submitted by a duly authorized Legally Responsible Person.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect the Required Number of Storm Water Samples

In addition, EDEN alleges that the Discharger has failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

Furthermore, if the Facility does not experience discharge because it is engineered and constructed to contain the maximum historic precipitation event (or series of events), the Discharger is required to submit a Notice of Non-Applicability (NONA) and a No-Discharge Technical Report to the Regional Board by following the steps listed in Section XX.C of the General Permit.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 11/2/15, 11/9/15, 11/15/15, 11/24/15, 12/3/15, 12/10/15, 12/13/15, 12/18/15, 12/20/15, 12/24/15, and 12/28/15.
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/5/16, 1/13/16, 1/15/16, 1/19/16, 1/22/16, 2/2/16, 2/17/16, 3/5/16, 3/10/16 and 3/20/16;
- c. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 10/14/16, 10/27/16, 10/30/16, 11/19/16, 11/26/16, 12/8/16, 12/10/16, 12/15/16, and 12/23/16.
- d. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/2/17, 1/7/17, 1/10/17, 1/12/17, 1/18/17, 1/20/17, 2/2/17, 2/6/17, 2/16/17, 2/20/17, 3/4/17, 3/20/17, 3/24/17, 4/6/17, 4/12/17, 4/17/17 and 4/19/17.
- e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017. Qualified Storm Events occurred in the vicinity of the facility on the following relevant dates: 10/19/17, 11/4/17, 11/8/17, 11/16/16, and 11/26/17; and
- f. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018. Qualified Storm Events occurred in the vicinity of the facility on at least the following relevant dates: 1/3/18, 1/5/18, 1/8/18, 1/22/18, 1/24/18, 2/28/18, 3/1/18, 3/12/18, 3/20/18, 3/24/18, 4/5/18, 4/11/18, and 4/16/18.

Further, the Discharger has not applied for or received a No Exposure Certification (NEC) for the facility, pursuant to Section XVII of the General Permit.

In addition, the Discharger has not applied for or received an exemption from sampling for Dischargers claiming “No Discharge” through the Notice of Non-Applicability (NONA) provisions contained in Section XX.C of the General Permit.

C. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

“I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On April 25, 2017, July 11, 2017, and July 9, 2018, the Discharger submitted its Annual Reports for the Fiscal Years 2015-16, 2016-17 and 2017-2018, respectively. The 2015-16 and 2016-17 Annual Reports were signed under penalty of law by Douglas Tateoka, the facility’s designated Legally Responsible Person (“LRP”), and the 2017-18 Annual Report was signed by the corporation’s President, Michael Emmerich.

Mr. Tateoka and Mr. Emmerich both responded “Yes” to Question No. 3 on all three of the Annual Reports (“Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?”). However, as discussed above, the Discharger failed to collect and analyze *any* legitimate storm water samples during the 2015-16, 2016-17 and the 2017-18 reporting years.

Based on the foregoing, it is clear that both Mr. Tateoka and Mr. Emmerich made false statements in the Facility's 2015-16, 2016-17 and 2017-18 Annual Reports when they indicated that the facility had collected samples according to Section XI.B of the General Permit.

D. Failure to Update Legally Responsible Person and/or to Submit New PRDs

The Facility re-applied for NPDES coverage under the 2015 General Permit on January 26, 2017. The NOI Application indicated that the Facility Manager and Legally Responsible Person was "Douglas Tateoka." However, EDEN's investigation has revealed that in fact, Douglas Tateoka is no longer employed with Precision.

Section XII.K of the General Permit provides:

1. All Permit Registration Documents (PRDs) for NOI and NEC coverage shall be certified and submitted via SMARTS by the Discharger's Legally Responsible Person (LRP). All other documents may be certified and submitted via SMARTS by the LRP or by their designated Duly Authorized Representative.

2. When a new LRP or Duly Authorized Representative is designated, the Discharger shall ensure that the appropriate revisions are made via SMARTS. In unexpected or emergency situations, it may be necessary for the Discharger to directly contact the State Water Board's Storm Water Section to register for SMARTS account access in order to designate a new LRP.

3. Documents certified and submitted via SMARTS by an unauthorized or ineligible LRP or Duly Authorized Representative are invalid.

E. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and

the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

Specifically, the Regional Water Board conducted an inspection of the Facility on May 18, 2017, and noted numerous BMP deficiencies at the site, including the following:

- Preventative Maintenance, and Spill & Leak Prevention and Response deficiency: oil drips and leaks noted emanating from forklifts.
- Material Handling deficiency: Liquid in sump by large outdoor tanks not properly handled and emptied.
- Equipment Maintenance deficiency: Pipes through the two large outdoor tank secondary containment walls missing valves.
- Perimeter Control deficiency: Potential for rainwater to flow into manufacturing and warehouse buildings noted.
- Good Housekeeping/Material Handling deficiency: Facility disposing empty bags containing white powder to a dumpster located near a storm drain, causing the dumpster to turn white.
- Material Handling/Storage deficiency: Drums containing finished product stored in an uncontained area in front of the facility.

F. Failure to Comply with the Mandates of a Water Board Violation Notice

Pursuant to Section XIX of the General Permit, Regional Water Boards have general authority to enforce the provisions and requirements of the General Permit, including reviewing SWPPPs, Monitoring Implementation Plans, ERA Reports, and Annual Reports and requiring Dischargers to revise and re-submit PRDs, conducting compliance inspections, and taking enforcement actions.

As fully discussed above, the Regional Water Quality Control Board inspected the Facility on May 18, 2017, and ordered the Facility to update its SWPPP to include appropriate BMPs and additional discharge/sampling points (i.e., by the back driveway).

Precision has failed to date to comply with those mandates. The Discharger's deficient SWPPP, Site Map and BMPs are discussed above.

G. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN (including its review of publicly available storm water data, and the Facility's EPA and Basin Plan Benchmark exceedances noted herein) indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Precision Technical Coatings, Inc, as well as employees of the Discharger responsible for compliance with the CWA, and Michael Emmerich and the Emmerich Family Trust, the Property Owner.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which

may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
EDEN ENVIRONMENTAL CITIZEN'S GROUP
2151 Salvio Street #A2-319
Concord, CA 94520
Telephone: (925) 732-0960
Email: Edenenvcitizens@gmail.com (emailed correspondence is preferred)

EDEN has retained counsel in this matter as follows:

CRAIG A. BRANDT
Attorney at Law
5354 James Avenue
Oakland CA, 94618
Telephone: (510) 601-1309
Email: craigabrandt@att.net

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Craig A. Brandt.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger and Property Owner to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit

requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger, the Property Owner or their counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'Aiden Sanchez', with a stylized, overlapping loop structure.

AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Roseville, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Director
San Francisco Bay Regional Water Quality Board
1515 Clay Street, Suite 1400
Oakland, CA 94612